

Procter & Gamble – I.P. Division

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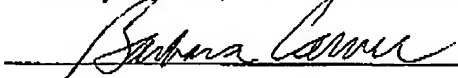
**FACSIMILE TRANSMITTAL SHEET AND
CERTIFICATE OF TRANSMISSION UNDER 37 CFR 1.8**

**TO: United States Patent and Trademark Office
Mail Stop Appeal Brief - Patents
Examiner Michele M. Kidwell**

Fax No. 571-273-8300

Phone No. 571-272-4935

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- 1) Appeal Brief and Appendices (7 pages)
- 2) Fee Transmittal (1 page)
- 3)
- 4)
- 5)

Inventor(s): Michael C. Raufman, et al.

S.N.: 10/664,373

Filed: September 17, 2003

Docket # 7792C

Number of Pages Including this Page: 9

Comments:

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**RECEIVED
CENTRAL FAX CENTER****JAN 26 2007****IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Application No. : 10/664,373
Inventor(s) : Michael C. Raufman, et al.
Filed : September 17, 2003
Art Unit : 3761
Examiner : Michele M. Kidwell
Docket No. : 7792C
Confirmation No. : 4564
Customer No. : 27752
Title : Absorbent Articles Having Positioning Indicia

APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

This Brief is filed pursuant to the appeal from the decision communicated in the Office action mailed on August 28, 2006. A timely Notice of Appeal was filed on November 28, 2006.

REAL PARTY IN INTEREST

The real party in interest is The Procter & Gamble Company of Cincinnati, Ohio.

RELATED APPEALS AND INTERFERENCES

There are no known related appeals, interferences, or judicial proceedings.

STATUS OF CLAIMS

Claims 1 and 2 are rejected, and claim 3 is cancelled.

Claims 1 and 2 are appealed.

A complete copy of the appealed claims is set forth in the Claims Appendix attached herein.

STATUS OF AMENDMENTS

No amendment was filed subsequent to the final Office action dated August 28, 2006.

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SUMMARY OF CLAIMED SUBJECT MATTER

Claim 1 relates to a disposable absorbent article 20 comprising: a chassis 22; a pair of side panels 30, 88; and a predetermined ornamental visual image 102. (See *inter alia* page 7, ll. 9-32; page 8, ll. 1-14; page 21, ll. 7-23; and Figs. 1 and 8-9).

The chassis 22 has a longitudinal central axis 100 and a garment-facing surface 42 and a body-facing surface 40. The chassis 22 is adapted to extend from a back waist area of a wearer to a front waist area of a wearer with the body-facing surface 40 overlying the crotch area of the wearer. The chassis includes a first waist region 46, a second waist region 44, and a crotch region 48. (See *inter alia* page 7, ll. 9-23; and Fig. 1).

The pair of side panels 30, 88 extend substantially laterally outwardly from respective edge portions of the second waist region 44 of the article, and the side panels each carrying a securement element 98 for engagement with the garment-facing surface 42 at the first waist region 46 of the article for securing the article in a wearing position on the body of the wearer. (See *inter alia* page 7, ll. 9-23; page 21, ll. 7-23; and Figs. 1 and 8-9).

The predetermined ornamental visual image 102 consists of a first image element and a second image element, wherein the first image element is joined to one of the pair of side panels 88 and the second image element is joined to another of the pair of side panels 88. When the side panels 88 are secured to the first waist region 46, the first and the second image elements complete the predetermined ornamental visual image 102, and the predetermined ornamental visual image is visible when the side panels are secured to the first waist region 46. (See *inter alia* page 21, ll. 7-23; and Figs. 8-9).

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Whether claims 1 and 2 are unpatentable under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,045,543 issued to Pozniak et al. (hereinafter "Pozniak").

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ARGUMENTS

Rejection of Claims 1 and 2 under 35 U.S.C. § 102(e) over Pozniak

In the final Office action of August 28, 2006, claims 1 and 2 remain rejected under 35 U.S.C. § 102(e) as being anticipated by Pozniak. A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. (See MPEP § 2131, citing Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)). There is at least one aspect of the invention defined by claim 1 not taught or suggested by Pozniak.

Independent claim 1 recites a disposable absorbent article comprising, in part, “a pair of side panels” and a “predetermined ornamental visual image consisting of a first image element and a second image element, wherein the first image element is joined to one of the pair of side panels and the second image element is joined to another of the pair of side panels.” Claim 1 further recites that “when the side panels are secured to the first waist region the first and second image elements complete the predetermined ornamental visual image.” In contrast, Pozniak discloses a personal care article with fastening tabs that can be secured to a front portion of the article. (See col. 2, ll. 16-31). First indicia are located on the front portion of the article, and second indicia are located on the fastening tabs. (See col. 2, ll. 27-38). As such, Pozniak does not teach or suggest a predetermined visual image consisting of a first image element and a second image element that complete the visual image when the side panels are secured to the first waist region, as recited in claim 1.

In the final Office action of August 28, 2006, it is contended that “the indicia lines on the right side, left side and in the middle of the article of Pozniak may be considered first and second image element (sic). When fastened the image elements are conjoined and may be considered as complete as set forth in col. 3, lines 8-19 and figures 2-5.” (See final Office action, page 4, lines 7-10). As such, the Office action is equating: (1) the indicia lines on the right side of the article of Pozniak; (2) the indicia lines on the left side of the article of Pozniak; and (3) the indicia lines in the middle of the article of Pozniak with the first and second image elements recited in claim 1. In so doing, the Office action mischaracterizes indicia lines grouped in three different areas of the article in Pozniak

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(i.e. a right fastening tab; a left fastening tab; and a front portion of the article) as the first and second image elements defined by the language of claim 1.

It is respectfully submitted that, for at least the reasons discussed above, Pozniak does not disclose or suggest all the elements of claim 1. As such, it is believed that claim 1 is patentable under 35 U.S.C. § 102(e) over Pozniak. Claim 2 depends from and includes all the limitations of claim 1. Thus, for at least the same reasons discussed above with reference to claim 1, claim 2 is patentable under 35 U.S.C. § 102(e) over Pozniak.

Therefore, it is believed that claims 1 and 2 are in form for allowance and such indication is respectfully requested.

SUMMARY

In view of all of the above, it is respectfully requested that the Board reverse the rejections with respect to claims 1 and 2.

Respectfully submitted,
THE PROCTER & GAMBLE COMPANY



Charles R. Matson
Registration No. 52,006
(513) 634-0072

Date: January 26, 2007

Customer No. 27752

(Appeal Brief.doc)
Revised 04/26/2006

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CLAIMS APPENDIX

1. (Rejected) A disposable absorbent article comprising:
 - (a) a chassis having a longitudinal central axis and a garment-facing surface and a body-facing surface, the chassis adapted to extend from a back waist area of a wearer to a front waist area of a wearer with the body-facing surface overlying the crotch area of the wearer, the chassis including a first waist region, a second waist region and a crotch region;
 - (b) a pair of side panels extending substantially laterally outwardly from respective edge portions of the second waist region of the article, the side panels each carrying a securement element for engagement with the garment-facing surface at the first waist region of the article for securing the article in a wearing position on the body of the wearer;
 - (c) a predetermined ornamental visual image consisting of a first image element and a second image element, wherein the first image element is joined to one of the pair of side panels and the second image element is joined to another of the pair of side panels, wherein when the side panels are secured to the first waist region the first and the second image elements complete the predetermined ornamental visual image, and wherein the predetermined ornamental visual image is visible when the side panels are secured to the first waist region.
2. (Rejected) An article in accordance with claim 1 wherein the securement elements include fastener tabs that have a predetermined ornamental shape.

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EVIDENCE APPENDIX

NONE

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RELATED PROCEEDINGS APPENDIX

NONE

FEE TRANSMITTAL for FY 2007 Patent fees are subject to annual revision. Effective December 8, 2004	Complete if Known	
	Application Number	10/664,373
	Confirmation Number	4564
	Filing Date	September 17, 2003
	First Named Inventor	Michael C. Raufman
	Examiner Name	Michele M. Kidwell
TOTAL AMOUNT OF PAYMENT (\$500)	Docket No.	7792C

METHOD OF PAYMENT 1. [X] The Director is hereby authorized to charge indicated fees submitted on this form, credit any over payments, and charge any additional fee(s) during the pendency of this application to: Deposit Account Number: 16-2480 Deposit Account Name: The Procter & Gamble Company	FEE CALCULATION (continued) 5. ADDITIONAL FEES <table border="1"> <thead> <tr> <th>Fee Description</th> <th>Fee</th> <th>Fee Paid</th> </tr> </thead> <tbody> <tr> <td>Extension for reply within 1st month</td> <td>(\$120)</td> <td><input type="checkbox"/></td> </tr> <tr> <td>Extension for reply within 2nd month</td> <td>(\$450)</td> <td><input type="checkbox"/></td> </tr> <tr> <td>Extension for reply within 3rd month</td> <td>(\$1,020)</td> <td><input type="checkbox"/></td> </tr> <tr> <td>Extension for reply within 4th month</td> <td>(\$1,590)</td> <td><input type="checkbox"/></td> </tr> <tr> <td>Extension for reply within 5th month</td> <td>(\$2,160)</td> <td><input type="checkbox"/></td> </tr> <tr> <td>Information Disclosure Statement fee</td> <td>(\$180)</td> <td><input type="checkbox"/></td> </tr> <tr> <td>37 CFR 1.16(f) Late Oath/Declaration (nonprovisional)</td> <td>(\$130)</td> <td><input type="checkbox"/></td> </tr> <tr> <td>37 CFR 1.17 (q) Surcharge - Late provisional filing fee or cover sheet</td> <td>(\$50)</td> <td><input type="checkbox"/></td> </tr> <tr> <td>Non-English specification</td> <td>(\$130)</td> <td><input type="checkbox"/></td> </tr> <tr> <td>Notice of Appeal</td> <td>(\$500)</td> <td><input type="checkbox"/></td> </tr> <tr> <td>Filing a brief in support of an appeal</td> <td>(\$500)</td> <td><input checked="" type="checkbox"/></td> </tr> <tr> <td>Request for oral hearing</td> <td>(\$1,000)</td> <td><input type="checkbox"/></td> </tr> <tr> <td>Acceptance of unintentionally delayed claim for priority under 35 U.S.C. 119, 120, 121, or 365 (a) or (c)</td> <td>(\$1,370)</td> <td><input type="checkbox"/></td> </tr> <tr> <td>Other:</td> <td></td> <td><input type="checkbox"/></td> </tr> </tbody> </table>	Fee Description	Fee	Fee Paid	Extension for reply within 1 st month	(\$120)	<input type="checkbox"/>	Extension for reply within 2 nd month	(\$450)	<input type="checkbox"/>	Extension for reply within 3 rd month	(\$1,020)	<input type="checkbox"/>	Extension for reply within 4 th month	(\$1,590)	<input type="checkbox"/>	Extension for reply within 5 th month	(\$2,160)	<input type="checkbox"/>	Information Disclosure Statement fee	(\$180)	<input type="checkbox"/>	37 CFR 1.16(f) Late Oath/Declaration (nonprovisional)	(\$130)	<input type="checkbox"/>	37 CFR 1.17 (q) Surcharge - Late provisional filing fee or cover sheet	(\$50)	<input type="checkbox"/>	Non-English specification	(\$130)	<input type="checkbox"/>	Notice of Appeal	(\$500)	<input type="checkbox"/>	Filing a brief in support of an appeal	(\$500)	<input checked="" type="checkbox"/>	Request for oral hearing	(\$1,000)	<input type="checkbox"/>	Acceptance of unintentionally delayed claim for priority under 35 U.S.C. 119, 120, 121, or 365 (a) or (c)	(\$1,370)	<input type="checkbox"/>	Other:		<input type="checkbox"/>
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4. EXTRA CLAIM FEES FOR UTILITY AND REISSUE: <table border="1"> <thead> <tr> <th></th> <th>Extra Claims</th> <th>Fee from Below</th> <th>Fee Paid</th> </tr> </thead> <tbody> <tr> <td>Total Claims <input type="checkbox"/> - 20** = <input type="checkbox"/> x</td> <td><input type="checkbox"/></td> <td>=</td> <td><input type="checkbox"/></td> </tr> <tr> <td>Independent Claims <input type="checkbox"/> - 3** = <input type="checkbox"/> x</td> <td><input type="checkbox"/></td> <td>=</td> <td><input type="checkbox"/></td> </tr> <tr> <td>Multiple Dependent claims:</td> <td><input type="checkbox"/></td> <td>=</td> <td><input type="checkbox"/></td> </tr> </tbody> </table> ** or number previously paid, if greater; For Reissues, see below Fee Description Claims in excess of 20 (\$50 per claim) Independent claims in excess of 3 (\$200 per claim) Multiple dependent claim, if not paid (\$360) **Reissue: each independent claim over 3 and more than in the original patent (\$200 per claim) **Reissue claims: each claim over 20 and more than original patent (\$50 per claim) SUBTOTAL (4) (\$0)		Extra Claims	Fee from Below	Fee Paid	Total Claims <input type="checkbox"/> - 20** = <input type="checkbox"/> x	<input type="checkbox"/>	=	<input type="checkbox"/>	Independent Claims <input type="checkbox"/> - 3** = <input type="checkbox"/> x	<input type="checkbox"/>	=	<input type="checkbox"/>	Multiple Dependent claims:	<input type="checkbox"/>	=	<input type="checkbox"/>	5. SUBTOTAL(5) (\$500)																													
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SUBMITTED BY		Complete (if applicable)	
Name (Print/Type)	Charles R. Matson	Registration No. (Attorney/Agent)	52,006
Signature		Telephone	(513) 634-0072
		Date	January 26, 2007

This collection of information is required by 37 CFR 1.17. The information is required to obtain or retain a benefit by the public which is no file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon individual case. Any comments on the amount of time you are required to complete this form and/or suggestions for reducing